

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 EDWARD N. THOMAS,) Case No.: 1:20-cv-01679-SAB (PC)
12 Plaintiff,)
13 v.) ORDER DENYING PLAINTIFF'S MOTION
14 CHRISTIAN PFEIFFER, et al.,) FOR APPOINTMENT OF COUNSEL,
15 Defendants.) WITHOUT PREJUDICE
16) (ECF No. 7)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

17 Plaintiff Edward N. Thomas is proceeding *pro se* in this civil rights action pursuant to 42
18 U.S.C. § 1983.

19 Currently before the Court is Plaintiff's motion for appointment of counsel, filed December 3,
20 2020.

21 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
22 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent
23 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern
24 District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court
25 may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at
26 1525.

27 Without a reasonable method of securing and compensating counsel, the court will seek
28 volunteer counsel only in the most serious and exceptional cases. In determining whether

1 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
2 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
3 legal issues involved.” Id. (internal quotation marks and citations omitted).

4 In the present case, the Court does not find the required exceptional circumstances. Even if it
5 assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if
6 proved, would entitle him to relief, his case is not exceptional. The Court is faced with similar cases
7 almost daily. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se status and
8 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel. See
9 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require development of
10 further facts during litigation and a pro se litigant will seldom be in a position to investigate easily the
11 facts necessary to support the case.”) The test is whether exception circumstances exist and here, they
12 do not. In addition, on December 3, 2020, the undersigned issued Findings and Recommendations
13 recommending that Plaintiff pay the filing fee in full before this action can proceed. Thus, at this
14 juncture, the Court cannot find that Plaintiff is likely to proceed on the merits. Accordingly, Plaintiff’s
15 motion for the appointment of counsel is denied, without prejudice.

16
17 IT IS SO ORDERED.

18 Dated: December 8, 2020


UNITED STATES MAGISTRATE JUDGE